IN THE SUPREME COURT OF THE STATE OF WASHINGTON

ESTATE OF CHARLES C. HASELWOOD AND JOANNE L. HASELWOOD, husband and wife, Petitioners, v. BREMERTON ICE ARENA, INC., a Washington corporation; GREGORY S. MEAKIN and DEBORAH A. MEAKIN, husband and wife, Defendants, RV ASSOCIATES, INC., a Washington corporation, Respondent, CITY OF BREMERTON, Respondent Intervenor, MALLORY ENTERPRISES, INC., D/B/A ABBEY CARPETS, a Washington corporation; ROBISON MECHANICAL, INC., a Washington corporation; JPL HABITABILITY, INC., a Washington corporation; CONSOLIDATED ELECTRICAL DISTRIBUTORS,INC., d/b/a STUSSER ELECTRIC CO/EAGLE ELECTRIC, a Washington corporation; ALASKA CASCADE FINANCIAL SERVICES, INC., assignee for Sound Glass Sales, Inc., a Washington corporation; SULLIVAN HEATING & COOLING, INC., a Washington corporation; STIRNCO STEEL STRUCTURES, INC., a Washington corporation; EAGLE ELECTRIC, INC., a Washington corporation; HANSON SIGN COMPANY, INC., a Washington corporation; and STRIPE RITE, INC., a Washington corporation, Defendants.	)	No. 80411-7 En Banc Filed June 25, 2009

SANDERS, J. –The question in this case centers on the mechanic's lien statute, chapter 60.04 RCW.[1] We must determine whether a mechanic's lien can attach to improvements on property but not the real property itself, and if so, whether that lien has priority over a previously recorded deed of trust.

Joanne and Charles Haselwood (the Haselwoods)[2] loaned Bremerton Ice Arena, Inc. (BIA) money to construct an ice arena on property owned by the City of Bremerton (City). A promissory note was executed between the Haselwoods and BIA, which was secured by a deed of trust. BIA defaulted on the promissory note, and the Haselwoods brought an action to foreclosure the deed of trust against BIA, RV Associates, Inc. (RV), and 11 other creditors. They also sought a declaration that their deed of trust was prior to all other liens on the property. RV asserted by counterclaim that its mechanic's lien against BIA for failure to pay was superior to all other liens on the property because RV delivered equipment to the property before the Haselwoods recorded their deed of trust. The trial court held the Haselwoods' deed of trust was superior to RV's lien under chapter 60.04 RCW. The Court of Appeals reversed in part, holding RV's lien attached only to the improvements and was superior to

[1] A "mechanic's lien" is "[a] statutory lien that secures payment for labor or materials supplied in improving, repairing, or maintaining real or personal property, such as a building, an automobile, or the like." Black's Law Dictionary 943 (8th ed. 2004).

[2] Charles Haselwood died on November 20, 2006, so we will refer to Joanne Haselwood and the estate of Charles Haselwood collectively as the Haselwoods.

Haselwoods' deed of trust, affirmed in part, and remanded for further proceedings. We affirm the Court of Appeals.

Facts and Procedural History

The United States Secretary of the Interior deeded 17.6 acres of land to the City in 1971 for use as a public park and recreation center. The conveyance prohibited the City from leasing the land except to another government agency, but allowed the City to provide recreational facilities and services by entering into private concession agreements, subject to approval by the Secretary of the Interior.

On August 9, 2002 the City and BIA entered into a concession agreement, which granted BIA a ground and use concession to develop, construct, and operate an ice arena on city property. The concession agreement provided in pertinent part: (1) the City retains ownership of the land; (2) BIA cannot encumber the land; (3) BIA will build and operate an ice arena on the land (Arena); (4) BIA will own the Arena for 10 years, with four successive 10-year renewal options; (5) BIA will own improvements developed and constructed on the land subject to any security interest of a lender during the agreement; and (6) ownership of the Arena and all improvements will revert to the City when the agreement terminates.

The Haselwoods agreed to loan BIA funds to construct the Arena. In

exchange for an initial loan of $3,775,000 at 10 percent interest, BIA executed and delivered a promissory note to the Haselwoods on September 5, 2002, secured by a commercial security agreement and a deed of trust. The deed of trust purported to secure the loans by (1) the real property at the Arena location; (2) the concession agreement; and (3) all buildings, improvements, and tenements located on the real property. The Haselwoods recorded the deed of trust on September 13, 2002.

BIA hired the Wootan Group as construction manager and general contractor for the Arena construction. RV submitted a $441,716 bid to the Wootan Group to clear, grade, and backfill the site; install drainage, sewer, and water lines; and install a storm water system. The Wootan Group awarded the contract to RV on August 17, 2002, providing RV commenced work by September 9, 2002. RV first delivered equipment to the site on September 6, 2002. RV and BIA executed their contract on September 20, 2002.

RV performed "clearing, grubbing, mass excavation, installation of sewer lines, water lines, storm systems, sidewalks, asphalt paving, striping and curb and gutter." Clerk's Papers (CP) at 199. After RV commenced working, the Wootan Group made several changes to the plans and specifications, which RV claimed increased the cost of its work. RV claimed BIA failed to pay $101,905.30 required by its contract and recorded a statutory mechanic's lien

against BIA and the Arena in July 2003.

After BIA defaulted on its promissory note to the Haselwoods in August 2003, the Haselwoods filed a complaint for foreclosure in Kitsap County Superior Court against BIA, RV, and 11 other creditors with interest in the Arena. The Haselwoods sought a declaration their security interest was prior to all other liens on the property, and a decree of foreclosure authorizing sale of the property.

RV filed an answer, counterclaim, and cross claim, asserting it had a mechanic's lien on the real property underlying the Arena, and its lien was superior to all other liens, including the Haselwoods' security interests. RV claimed priority of liens under RCW 60.04.061, asserting it delivered equipment to the site on September 6, 2002, one week before the Haselwoods recorded their deed of trust. RV sought $101,905.30 plus 18 percent interest, costs, and attorney fees from BIA; a declaration its mechanic's lien was superior to all other claims on the property; and foreclosure.

In May 2004 RV moved for summary judgment against BIA, declaring its lien to be superior to all other liens and claims on the property. In response to RV's motion, the Haselwoods argued (1) the real property underlying the Arena is not lienable because it is public property, (2) RV's lien claim is void, and (3) even if RV had a valid lien on improvements, its priority cannot be

determined based on RV's claim.

Before the trial court issued its order regarding RV's motion for summary judgment, RV moved for an order allowing it to remove its improvements pursuant to RCW 60.04.051. The Haselwoods opposed the motion, arguing RV had no authority to remove the improvements, RV had not established the amount of money owed to it by BIA, and RV had not established priority of lien over the Haselwoods' deed of trust. The City also opposed RV's motion to remove the improvements and filed a motion to intervene. The trial court granted the City's motion to intervene. The trial court found there were multiple contested factual issues and ordered a fact finding hearing to resolve the removal issue.

Prior to the hearing on whether RV could remove its improvements, the court denied in part and granted in part RV's motion for summary judgment against BIA in September 2004. The trial court ruled that RV's lien did not attach to the real property underlying the Arena, the corporate entity BIA, or the concession agreement. The court also found RV's lien "may attach to certain improvements to the facility commonly known as the Bremerton Ice Arena," but reserved ruling on that issue. CP at 609-10.

In January 2005 the Haselwoods moved for summary judgment against RV on the removal issue, arguing its lien was first and paramount. The trial

court granted the Haselwoods' motion. It ruled that the remedy of removal is available only to a lien claimant who has priority, but RV's lien is "junior, inferior and subordinate" to the Haselwoods' deed of trust. CP at 773.

In August 2005 RV sought to file an amended answer, a counterclaim, and cross claims against the Haselwoods and the City. Both the Haselwoods and the City opposed the motion, arguing an amendment would be prejudicial. The trial court denied RV's motion to amend, finding that good cause did not exist.

In September 2005 the trial court entered a final judgment and decree of foreclosure in favor of the Haselwoods. RV filed a motion for discretionary review, which the Court of Appeals, Division Two, granted. *Haselwood v. Bremerton Ice Arena, Inc.*, 137 Wn. App. 872, 155 P.3d 952 (2007).

The Court of Appeals affirmed in part, reversed in part, and remanded for further proceedings. *Id*. Specifically, the Court of Appeals held (1) under RCW 60.04.051, RV's lien could attach only to the improvements, not to the real property underlying the Arena; (2) RCW 60.04.061 applied to RV's lien on the improvements, making it superior to the Haselwoods' deed of trust because it relates back to the date RV delivered equipment to the construction site; and (3) the trial court's denial of RV's motion to amend was not an abuse of discretion. *Id.* at 883, 887-88, 889-91. In addition, the Court of Appeals

reversed the trial court's award of attorney fees to the Haselwoods and declined to award attorney fees to the Haselwoods and RV on appeal. *Id*. at 891.

The Court of Appeals did not address RV's argument that it may remove its improvements regardless of priority because it concluded the trial court erred regarding the priority of RV's lien. *Id.* at 888. Instead it held that BIA's outstanding obligation to RV would be determined on remand. *Id*. The Court of Appeals also did not decide whether RV's lien was valid. *See id.* at 885, 891 n.7.

The Haselwoods petitioned this court for review, which we granted. 163 Wn.2d 1017, 180 P.3d 1291 (2008).

issues

I. Does RV's lien attach to the improvements on the real property under the concession agreement and RCW 60.04.051? We hold it does. Under the concession agreement BIA could only own improvements to the land, and RCW 60.04.051 allows a lien on improved property to extend only to the interest of the owner of the land.

II. If RV has a lien on the improvements on the property, does RV's lien have priority over the Haselwoods' deed of trust under RCW 60.04.061? We hold RV's lien has priority because under RCW 60.04.061 a lien relates back to the date materials are first delivered to

the site.

Standard of review

We review an order granting summary judgment de novo, taking all facts and inferences in the light most favorable to the nonmoving party. *Biggers v. City of Bainbridge Island*, 162 Wn.2d 683, 693, 169 P.3d 14 (2007). Statutory interpretation is a question of law reviewed de novo. *TCAP Corp. v. Gervin*, 163 Wn.2d 645, 650, 185 P.3d 589 (2008).

analysis

We are asked to apply the mechanic's lien statute, chapter 60.04 RCW. The Court of Appeals held that RV's lien is limited to the improvements on the property under RCW 60.04.051, and RV's lien is superior to the Haselwoods' deed of trust because it relates back as per RCW 60.04.061. The Haselwoods argue the Court of Appeals erred in holding that RCW 60.04.061 gives priority to a lien on improvements, but not the real property itself. We affirm the Court of Appeals.

When interpreting a statute we first look to its plain language. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). If the plain language is subject to only one interpretation, our inquiry ends because plain language does not require construction. *Id.*; *State v. Thornton*, 119 Wn.2d 578, 580, 835 P.2d 216 (1992). Absent ambiguity or a statutory definition, we give the words in a

statute their common and ordinary meaning. *Garrison v. Wash. State Nursing Bd.*, 87 Wn.2d 195, 196, 550 P.2d 7 (1976). To determine the plain meaning of an undefined term, we may look to the dictionary. *Id*.

If the statute remains subject to multiple interpretations after analyzing the plain language, it is ambiguous. *Burton v. Lehman*, 153 Wn.2d 416, 423, 103 P.3d 1230 (2005). A statute is ambiguous if "susceptible to two or more reasonable interpretations," but "a statute is not ambiguous merely because different interpretations are conceivable." *State v. Hahn*, 83 Wn. App. 825, 831, 924 P.2d 392 (1996). "If the statutory language is susceptible to more than one reasonable interpretation, then a court may resort to statutory construction, legislative history, and relevant case law for assistance in discerning legislative intent." *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.3d 228 (2007).

Mechanic's and materialmen's liens are creatures of statute, in derogation of common law, and therefore must be strictly construed to determine whether a lien attaches. *Dean v. McFarland*, 81 Wn.2d 215, 219-20, 500 P.2d 1244 (1972). But if it is determined a party's lien is covered by chapter 60.04 RCW, the statute is to be liberally construed to provide security for all parties intended to be protected by its provisions. RCW 60.04.900; *see Lumberman's of Wash., Inc. v. Barnhardt*, 89 Wn. App. 283, 286, 949 P.2d 382 (1997).

RV's lien attaches to the improvements on the property

We must first determine the scope of RV's lien on the property. RV argues its lien attaches to BIA's interest in the improvements to the property, and the Haselwoods concede that RV may have a lien on the improvements on the property. The Court of Appeals held "under RCW 60.04.051 and the concession agreement, RV Associates' lien could attach only to the improvements, not the underlying realty." *Haselwood*, 137 Wn. App. at 883. We agree.

RCW 60.04.021 provides "any person furnishing labor, professional services, materials, or equipment for the improvement of real property shall have a lien upon the improvement for the contract price of labor, professional services, materials, or equipment furnished at the instance of the owner, or the agent or construction agent of the owner." The Court of Appeals correctly states that the attachment of a lien is limited "to the interest of the person who requests the labor or materials, or that person's agent." *Haselwood*, 137 Wn. App. at 882 (citing *W.T. Watts, Inc. v. Sherrer*, 89 Wn.2d 245, 248, 571 P.2d 203 (1977)). This was codified in RCW 60.04.051, which provides "[t]he lot, tract, or parcel of land which is improved is subject to a lien to the extent of the interest of the owner at whose instance, directly or through a common law or construction agent the labor, professional services, equipment, or materials

were furnished." The extent of a lien under RCW 60.04.051 is based on the interest of the person regulating the services and materials.

Under the concession agreement between the City and BIA, the City retained ownership of the underlying land, while BIA owned the Arena and any improvements on the land for the duration of the agreement. When the concession agreement terminated, the improvements on the land would revert to the City. BIA never owned the land underlying the Arena. The most BIA could own, *during the agreement*, was the improvements to the land. Under RCW 60.04.051 and the concession agreement, RV's lien could reach only the improvements on the property, not the underlying property.

Washington courts have repeatedly held since 1931 public property cannot be subject to a mechanic's lien. *Hall & Olswang v. Aetna Cas. & Sur. Co.*, 161 Wash. 38, 47, 296 P. 162 (1931); *see Hewson Constr., Inc. v. Reintree Corp.*, 101 Wn.2d 819, 828-29, 685 P.2d 1062 (1984); *3A Indus., Inc. v. Turner Constr. Co.*, 71 Wn. App. 407, 411, 869 P.2d 65 (1993). RV has put forth no compelling reason to abandon this well-established principle, so we decline to do so. Since the underlying real property here is public land owned by the City, it is not subject to a lien.

RV's lien is limited to the improvements on the land, which constitute BIA's personal property, not the underlying real property owned by the City. We must

next determine whether RV's lien has priority over the Haselwoods' deed of trust.

RV's lien on improvements has priority over the Haselwoods' deed of trust

RV argues its lien has priority over the Haselwoods' deed of trust under the "relation-back" statute, RCW 60.04.061, because it delivered equipment to the property one week before the Haselwoods recorded their deed of trust. The Haselwoods argue that even if RV has a lien on the improvements to the land, RV's lien is junior to the Haselwoods' deed of trust because RV's lien does not attach to the publicly-owned real property, making the relation-back statute inapplicable. The Court of Appeals held that RCW 60.04.061 applies to RV's lien on improvements to give it priority over the Haselwoods' deed of trust. *Haselwood*, 137 Wn. App. at 888. We agree.

We must first determine whether RCW 60.04.061 applies to liens on improvements or only to liens that reach the underlying real property. If RCW 60.04.061 applies to liens on improvements, then RV's lien has priority because RV's first delivery of equipment to the site was one week before the Haselwoods recorded their deed of trust.

RCW 60.04.061 provides:

> The claim of lien created by this chapter upon any lot or parcel of land shall be prior to any lien, mortgage, deed of trust, or other encumbrance which attached to the land after or was unrecorded at the time of commencement of labor or professional services or first delivery of materials or equipment by the lien claimant.

The Haselwoods argue that a lien "upon any lot or parcel of land" means the relation-back section of the statute applies only to real property, not improvements to the property. The Haselwoods contend the Court of Appeals erred in holding RCW 60.04.061 gives priority to a lien on improvements.

> RCW 60.04.011(5) defines "improvements":
>
> "Improvement" means: (a) Constructing, altering, repairing, remodeling, demolishing, clearing, grading, or filling in, of, to, or upon any real property or street or road in front of or adjoining the same; (b) planting of trees, vines, shrubs, plants, hedges, or lawns, or providing other landscaping materials on any real property; and (c) providing professional services upon real property or in preparation for or in conjunction with the intended activities in (a) or (b) of this subsection.

The Court of Appeals accurately held "[t]he activities described in subsections (a) and (b) strongly suggest that the resulting improvements will be permanently affixed to or part of the realty. Generally, such permanent improvements become a part of the realty unless a contrary intention is expressed." *Haselwood*, 137 Wn. App. at 886. However sometimes a lien will not reach the real property because the improvements to the property are completed for someone who owns less than a fee estate in the property. *See Columbia Lumber Co. v. Bothell Dairy Farm*, 174 Wash. 662, 664, 25 P.2d 1037 (1933). As the Court of Appeals correctly stated, "[t]he legislature anticipated this problem and responded to it by enacting RCW 60.04.051, which permits a lienholder to remove its improvements if the lien does not attach to the real property." *Haselwood*, 137 Wn. App. at 886-87.

The improvements performed by RV included clearing; mass excavation; installing sewer lines, water lines, storm systems, and sidewalks; paving; and striping. These improvements permanently attached to the real property but were performed for BIA, which did not hold a fee estate in the real property.

The Court of Appeals interpreted the statutory language "lot or parcel of land" to include the improvements made by RV, stating:

> Under these circumstances, where the improvement cannot reasonably be treated as anything but a permanent structure, it is reasonable to conclude that the lien is "upon a parcel of land" within the meaning of RCW 60.04.061 because the lien attached to a permanent improvement on the lot.

Id. at 887. In other words, the Court of Appeals interpreted the statutory language "claim of lien created by this chapter upon any lot or parcel of land" to include the lien RV filed on the improvements. The Court of Appeals reasoned, "the work RV Associates performed would have become a part of the realty and inured to the City's benefit. Even though the agreement designates the improvements as personal property, the ice arena is nonetheless permanently situated on the City's real property." *Id.*

The Court of Appeals correctly held that "the trial court erred in interpreting RCW 60.04.061 to relate back only when the lien attaches to real property." *Id*. at 888. RV's lien on the improvements therefore attached on the day it delivered the equipment to the site, so its lien has priority over the

Haselwoods' deed of trust.

Attorney Fees

Under RAP 18.1 a party can recover reasonable attorney fees or expenses if applicable law grants the party that right and the party devotes a section of its opening brief to request fees or expenses. RAP 18.1(a), (b). In an action in which different construction liens are claimed against the same property, RCW 60.04.181(3) provides that "[t]he court may allow the prevailing party in the action, whether plaintiff or defendant, as part of the costs of the action, … attorneys' fees and necessary expenses incurred by the attorney in the superior court, court of appeals, supreme court, or arbitration, as the court or arbitrator deems reasonable."

Here RV did not comply with RAP 18.1 because it did not devote a section of its opening brief to attorney fees. RV requested attorney fees in its supplemental brief. Suppl. Br. of Resp't at 8-9. Thus, RV is not entitled to attorney fees from this court, although RV may be entitled to fees if it prevails on remand.

conclusion

We affirm the Court of Appeals holding that RV's lien could attach to the improvements under RCW 60.04.051, giving RV's lien priority over the Haselwoods' deed of trust under RCW 60.04.061. We remand for further proceedings consistent with this opinion.

AUTHOR:
Justice Richard B. Sanders

WE CONCUR:

Justice Susan Owens

Justice Mary E. Fairhurst

Justice James M. Johnson

Justice Tom Chambers